

1.

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE 1961-62

AND IN THE MATTER OF two complaints dated 28th July, 1962 and 16th day of August, 1962 respectively, by Mr. Oliver C. Davis, 12 Cloverhill Road, Toronto, Ontario,

- (1) That he was denied accommodation, services and facilities;
- (2) That he was discriminated against with respect to accommodation, services and facilities to which the public is customarily admitted, available in Pleasant View Camp, Halstead's Beach, R. R. #2, Bewdley, Ontario, by Mrs. Frankowski on the 28th July, 1962 because of race and colour.

AND IN THE MATTER OF two complaints dated 28th July, 1962 and () day of August, 1962 respectively by Mrs. Olive Davis, 12 Cloverhill Road, Toronto, Ontario,

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- (2) That she was discriminated against with respect to accommodation, services and facilities to which the public is customarily admitted, available in Pleasant View Camp, Halstead's Beach, R. R. #2, Bewdley, Ontario, by Mrs. Frankowski on the 28th July, 1962 because of race and colour.

ALAN BOROVOY, Esquire, Executive Secretary Toronto and District Labour Committee for Human Rights, Counsel for the Complainants,

DORIS FRANKOWSKI and W. E. FRANKOWSKI appeared without counsel.

The Ontario Human Rights Commission,
8 York Street,
Toronto, Ontario.

Gentlemen:-

Having on the 20th day of August 1962 been appointed a Board of Inquiry by the Honourable Minister of Labour under the Ontario Human Rights Code to inquire into the above complaints and to report to you in accordance with the provisions of said Act I did appoint Friday the 28th day of September 1962 at the Court House, Cobourg, Ontario, commencing at 10:00 o'clock in the forenoon as the time and place of such inquiry.

The Complainants, who are man and wife, reside in Toronto. They are both negroes and are readily recognizable as such. The person who is the subject of the complaints and who is described therein simply as "Mrs. Frankowski" was identified at the hearing by the complainants and other witnesses and is admittedly Doris Frankowski, wife of W. E. Frankowski who is the owner of Pleasant View Camp located at Halstead's Beach on Rice Lake in the County of Northumberland near Bewdley. Mrs. Frankowski is referred to by Mr. Davis in his complaints as the "receptionist" at the camp who was in charge of the office at all material times.

The incident which gave rise to the four complaints, two by each complainant, was planned by the complainants acting on advice of counsel appearing for them at this inquiry and with the cognizance of Dr. Daniel G. Hill, executive director of the Ontario Human Rights Commission. The action taken stemmed from the fact that several complaints which had been the subject of some investigation under The Fair Accommodation Practices Act (since repealed) had not been satisfactorily settled when Dr. Hill assumed his present duties. He was advised about these cases. One of them concerned a complaint by a Mr. and Mrs. W. Olbey, another negro couple, who are said to have written to Pleasant View Camp for accommodation in the summer of 1961 stating the fact that they were a negro couple. They are said to have received no reply to their inquiry whereas a white couple who asked for accommodation only two or three days later received a letter giving all necessary information about accommodation at the camp and available facilities. The complaint was not proceeded with and the file was passed on to Dr. Hill as not "effectively settled and conciliated". Dr. Hill then called Mr. Borovoy, counsel for the Olbeys, because, as he said, "I wanted to clear up the cases that were given over to me". As a result it would appear that no time was lost in arranging with Mr. and Mrs. Davis and others hereinafter mentioned to get evidence on which to base these complaints, perhaps adding more substance to them, and it is with these complaints that this inquiry is concerned. This background was revealed in the evidence of Dr. Hill and Miss Susan Loebel, a student who does part time work with The Toronto and District Labour Committee for Human Rights.

Despite the fact that this Board has all the latitude of a Conciliation Board in receiving evidence (Section 13, Subsection (2) of the Human Rights Code) much of the evidence given by these two witnesses was of a general nature and of questionable relevancy and was only admitted on the undertaking that counsel would demonstrate its relevancy as the hearing proceeded. Counsel for the complainants obviously

wished to introduce this evidence for the purpose of establishing a pattern of conduct on the part of the respondent which would have a bearing on the finding of this Board. Unfortunately the relevancy of the evidence was never demonstrated although it may have been relevant if the present complaints had been made against Mr. W. E. Frankowski rather than or in addition to the complaints against his wife. There is no evidence whatever of any connection between Mrs. Doris Frankowski and the Olbey matter, and for that reason the evidence of those witnesses, in so far as it deals with generalities or with the Olbey matter, must be disregarded.

This background cannot, however, be disregarded in so far as it, coupled with evidence given by the complainants and the couple associated with them in the incident under consideration, makes it plain that there was resort to pretence and false statements for the purpose of inducing the respondent to act as she did. The Board in making this Report has not therefore, overlooked the principle that where because of zeal in pursuing a certain cause persons have been led to resort to pretence and subterfuge in securing evidence their testimony must be weighed carefully lest the same motives may have a tendency to colour their evidence.

The complainants and another couple, Archie and Sharon Lambert of Toronto, rendezvoused by arrangement on July 28th 1962 at a place within five minutes motoring distance of Pleasant View Camp. It was agreed that the complainants would proceed to the camp and seek accommodation and then return to the rendezvous. In the event that they were refused Mr. and Mrs. Lambert were to immediately go to the camp and follow the same procedure. Neither couple intended to stay at the camp if accommodation was offered to them.

Mr. and Mrs. Davis, the complainants, arrived at the store which also served as office for the camp, at 4:40 p. m. on July 28 and found the respondent Mrs. Doris Frankowski in charge. In answer to a polite request for accommodation she said, "No, no, no, no" and walked towards the rear of the store.

Mr. Davis, who acted as spokesman, then told Mrs. Frankowski that he and his wife would be around for a few days or a week and asked for a card with the name and address of the camp on it so that they could 'phone for accommodation or drop in on the way back. Mrs. Frankowski refused to give them any satisfaction and said that the camp was filled up until the end of August whereupon the complainants thanked her and departed. It took them five minutes to return to the rendezvous, another five minutes at the outside to brief Mr. and Mrs. Lambert on what had transpired, and then the Lamberts went to the camp. The elapsed time between their arrival at the office of the camp and the departure of the complainants therefrom would be not more than fifteen minutes. They went through the same procedure in seeking accommodation and were cordially received by Mrs. Frankowski who showed them available accommodation and quoted them daily or weekly rates. She asked them if they wished to register but they made up a story about wanting to go into Peterborough to the liquor store before it closed and said they would come back later and register which, of course, they had no intention of doing and never did.

Mrs. Frankowski did not give evidence but her husband, W. E. Frankowski, who acted as her spokesman throughout, called two witnesses and also gave evidence himself. The first of these witnesses, a Charles Woodward, a neighbour of the Frankowskis, gave evidence that he had seen negroes apparently staying at Pleasant View Camp at different times over a period of four years. The evidence of the other witness, John Schembri, has to be considered along with the evidence of Mr. Frankowski. Mr. Schembri said that he and his wife and three of their children and a friend and his wife and one child left Toronto for Pleasant View Camp on the afternoon of July 28 and arrived there around 5:00 o'clock or quarter to 5:00 in the afternoon to take up a reservation for a cottage which he had made with Mr. Frankowski the previous Wednesday. On arrival Mr. Schembri said that he first went to the lake (presumably the boat house) to get the key for the cottage from Mr. Frankowski. He was told

to go to see Mrs. Frankowski about it and when he asked her for the key she told him that the cottage was already booked and that the people would be back in an hour's time. When they did not appear he was given the key and occupied the cottage.

Mr. Frankowski said that he had reserved the cottage (there was only one vacant cottage at all material times) for Schembri and that his wife knew about the reservation, although they had not followed their usual practice of marking the reservation in the book kept at the office for that purpose. He variously said (a) that Schembri and his party arrived at the camp between the departure of the Davises, whom his wife had refused because she knew of the Schembri reservation, and the arrival of the Lamberts (b) that they were at the boat house, to his wife's knowledge, when the Lamberts were at the office and that his wife preferred the Lamberts to the Schembri party because there were too many of the latter and the boys did a lot of running around and jumping.

The Board is entitled to act upon a preponderance of credible evidence in an inquiry of this nature which is merely for the purpose of making recommendations and is neither a criminal or quasi criminal proceeding. Taking the evidence as a whole, and having had the opportunity of observing the witnesses carefully and without overlooking the necessity of scrutinizing the evidence of the complainants most carefully for reasons already stated, the Board is of the opinion that Mrs. Doris Frankowski denied the Davis request for accommodation because they were coloured. While there is no reason to disbelieve the evidence that some negroes have stayed at Pleasant View Camp on other occasions, the particulars of those occasions are so sketchy as to be valueless for the purpose of these proceedings. It might be convenient to rent to negroes under certain circumstances, for example, when things are slack or in the off-season, and still discriminate against them at other times. This Board is concerned with whether there was discrimination in the circumstances which obtained on the day in question and has concluded that there was.

The evidence given on behalf of the respondent has fortified the Board in its conclusion. Mr. Frankowski stated that his wife knew that the cottage was reserved for Schembri and that that is why she refused the complainants. It would naturally follow that she was quite conscious of the Schembri reservation some fifteen minutes later and yet she offered to rent to the Lamberts. The explanation given for this was that it was a matter of preference on the part of Mrs. Frankowski which is strange considering that Schembri was a well known customer of Pleasant View Camp. Then again Dr. Hill in his evidence said that Mr. Frankowski told him during his investigation of the incident that his wife must have forgotten the Schembri reservation when she offered to rent to Lamberts and, if so, it follows that her reason for turning away the complainants a few minutes before was not based on the fact that the accommodation was already reserved.

There are other significant factors to be considered. For example, Mr. Schembri admitted on cross-examination that he told counsel for the complainants and his associate, Miss Loebel, a different story about his arrival time at the camp during an interview which took place in Toronto on the Sunday before this inquiry. Furthermore Schembri and his party did, in fact, occupy the cottage on the night of July 28th despite evidence given at one stage that his party was too large for this cottage. Then the evidence given by Mr. Frankowski as to the time of arrival of the Schembri party at the camp in relation to that of the complainants and the Lamberts is purely theoretical and was not based on observation since he saw neither the complainants nor the Lamberts. In fact the Board drew the conclusion from the evidence that Mr. Schembri did not have a reservation for July 28th. The fact that none had been noted in the reservation book although this was the height of the tourist season bears out this conclusion. Dr. Hill noted that the registration record showed that Mr. Schembri checked in at 6:00 o'clock and the Board is of the opinion that this record is correct and that when Schembri arrived in the late afternoon

Mrs. Frankowski thought that the Lamberts would be returning and hence Mr. Schembri was not given the key until 6:00 o'clock when it seemed certain that the Lamberts would not return.

All of these inconsistencies in the evidence on behalf of the respondent lend credence to the evidence given by and on behalf of the complainants and lead to the conclusion that there was discrimination practised by Mrs. Doris Frankowski against the complainants with respect to available accommodation at Pleasant View Camp on July the 28th 1962 because of their colour.

Although each complainant filed two complaints arising out of the same set of facts, one as to denial of accommodation, services and facilities and the other as to discrimination with respect to same, it is apparent that the issue is discrimination in the form of complete denial of accommodation rather than discrimination by way of offering inferior accommodation, services and facilities because of colour. It was not contended that Pleasant View Camp is not a place to which the public is customarily admitted.

It has been publicly declared that the Ontario Human Rights Code has a two-fold aim (1) to make secure in law the inalienable rights of every citizen and (2) to create a climate of understanding and mutual respect among the people. The statute, after espousing the principles of the Universal Declaration of Human Rights proclaimed by the United Nations and after declaring it to be public policy in Ontario that every person is free and equal in dignity enacts, inter alia, as follows:-

S.2. No person, directly or indirectly, alone or with another, by himself or by the interposition of another shall,

(a) deny to any person or class of persons the accommodation, services or facilities available in any place to which the public is customarily admitted because of the race, creed, colour, nationality, ancestry or place of origin of such person or class of persons.

While Mrs. Doris Frankowski has left herself open to

prosecution for contravention of the above section of the Statute, it is the recommendation of this Board that in the event of an immediate apology and an undertaking by Mrs. Frankowski not to practice discrimination in the future because of race, creed, colour, nationality, ancestry or place of origin, such prosecution be not proceeded with. Since Mrs. Frankowski is not the owner of Pleasant View Camp, it would be useless to suggest that she include with her apology and her undertaking an invitation to the complainants to make use of the accommodation and facilities of the camp as paying guests.

It is impossible, of course, to say whether the respondent, Doris Frankowski, actually violated the Statute because that could only be determined in a properly constituted Court of Law under the laws of evidence applicable to quasi criminal proceedings. The opportunity to purge herself by way of the apology and undertaking recommended by the Board at this stage is based on the fact that a Board of Inquiry under the statute is empowered to recommend the course of action that should be taken when it finds that the complaints were supported by the evidence. This can only mean that the Board is able to recommend some action short of prosecution if it thinks that the circumstances warrant it.

The Board is further prompted to make the aforesaid recommendation by the tolerant attitude of the complainants who are apparently satisfied to achieve their goal of stamping out discrimination without proceeding to prosecution if the subject of the complaint is willing to co-operate. With this attitude the Board is in full accord since it would appear that nothing could be less likely to foster the climate of understanding and mutual respect among people envisaged by The Ontario Human Rights Code than these so-called surveys or general tests for discrimination which are not founded on legitimate requests for accommodation.

The Board was originally advised that Mr. W. L. Frankowski was the respondent in these proceedings. However, upon the development of the evidence and the careful reading of the complaints which were filed, it became apparent that Mr.

Frankowski was not a subject of any of the complaints. It follows that no recommendation is made with respect to Mr. W. E. Frankowski who was not a proper party to these proceedings. It also goes without saying that Pleasant View Camp cannot be the subject of any recommendation, both because of the fact that the camp itself was not made the subject of the complaints and because, under any circumstances, it is not incorporated and therefore not a "person" under The Ontario Human Rights Code (Section 18, Subsection (g).)

It is academic to point out that had Mr. W. E. Frankowski been made a subject of the complaints, he would not necessarily be absolved from responsibility for the discriminatory acts of his wife acting as his servant or agent even though he did not know of such acts until after they had occurred and, therefore, there was no mens rea. The Ontario Human Rights Code would appear to be, as submitted by counsel for the complainants, a public welfare statute. It meets the two tests of such a statute as opposed to a criminal enactment in that it is primarily aimed at regulating the social order rather than singling wrongdoers out for punishment and because the penalty for violation is a comparatively light monetary fine rather than imprisonment. Such a statute dealing with quasi criminal acts which in the public interest are prohibited under penalty exclude the doctrine of mens rea (blameworthy state of mind). Then too it is significant that the change in the wording of the corresponding section in the former Fair Accommodation Practices Act to extend liability to persons who directly or indirectly, alone or with another, by themselves or by the interposition of another, violate the provisions of the statute has been carried into the present Ontario Human Rights Code.

All of which is respectfully submitted.

Dated at Bracebridge, Ontario this 31st day of October, 1962.

(Signed) Judge Douglas C. Thomas,
Board of Inquiry.

